

IN THE COURT OF APPEALS OF IOWA

No. 1-887 / 11-1508
Filed November 23, 2011

**IN THE INTEREST OF C.H.,
Minor Child,**

**C.J.E., Mother,
Appellant.**

Appeal from the Iowa District Court for Black Hawk County, Kellyann M. Lekar, Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Crystal W. Rink of Dunakey & Klatt, P.C., Waterloo, for appellant mother.

Michael Lanigan, Waterloo, for father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Steven J. Halbach, Assistant County Attorney, for appellee State.

Melissa Anderson Seeber, Waterloo, for minor child.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

DOYLE, J.

A mother appeals the termination of her parental rights to her child. She contends the State failed to prove the grounds for termination by clear and convincing evidence and termination is not in the child's best interests. We affirm.

I. Background Facts and Proceedings.

The child, born in 2009, was adjudicated in need of assistance in March 2010 after the mother presented at the emergency room with a large amount of illegal drugs on her person, including methamphetamine. She tested positive for heroin, and she admitted caring for the child while abusing heroin. The child also tested positive for ingestion of heroin. The child was removed from the mother's care and placed with his paternal grandparents, where he has since remained.

The State in September 2010 filed its petition for termination of the mother's parental rights. Hearing on that petition was held in December 2010. Thereafter, the juvenile court entered its order in January 2011 granting the mother an additional six months for reunification. The court first noted:

The mother's efforts at reunification throughout this matter have had highs and lows which track her success in participation in substance abuse treatment. The mother has a nine-year history of substance abuse which includes pain medications, heroin, marijuana, and alcohol. She has been addressing these issues since the time of the child's removal; however, [she] has suffered setbacks during the course of that time. She has suffered nine relapses since March 29, 2010. She did participate in inpatient treatment following the removal and was able to progress to outpatient treatment and finally to relapse prevention. She still participates in relapse prevention at her own request. She also attends NA meetings. [The mother] admits [to a] significant lapse or relapse in June 2010 and July 2010 and voluntarily returning for detox treatment in August 2010. Her most recent relapse was November 14, 2010. The mother also admits that at times she has

not been straightforward with the [Iowa] Department of Human Services [(Department)] with regard to her relapses. She has not specifically lied about her relapses but has not been forthcoming with that information until necessary.

Nevertheless, the court found:

Despite her struggles with maintaining sobriety, all parties agree that the mother has made some strides in her substance abuse treatment and has maintained some periods of sobriety. In addition, all parties acknowledge that the mother has significant natural parenting skills and that she is a competent parent when she is stable in her mental health and not utilizing substances. All parties also acknowledge that there is a strong bond between mother and child.

The court determined the mother should have six additional months to “exhibit her commitment to recovery and sobriety as well as obtaining additional stability in her life.” However, the court emphasized

The mother needs to fully invest in services and fully participate in all opportunities available to her She needs to be compliant with the [Department] in all aspects of the case plan. The mother needs to maintain her sobriety, maintain her compliance with her treatment program, maintain her mental health appointments and treatment The mother is admonished of the need for her to use this critical time period to maintain her presence in the life of her child and to show her continued commitment to appropriate, healthy, and safe parenting.

The mother initially progressed after being granted the additional time for reunification. She was successfully discharged from treatment. She obtained full-time employment. She enjoyed semi-supervised visitation with the child, and the Department was considering moving to unsupervised visits.

However, in late June 2011, the mother’s progress stagnated. She admitted she had twice used marijuana. In July 2011, the mother’s hair tested positive for heroin. The mother denied using heroin and suggested the marijuana she had used may have had some heroin residue in it, although her

hair did not test positive at that time for marijuana use. The mother also admitted to using Vicodin twice in July but denied she had known it was Vicodin until after she had taken the pills.

On July 22, 2011, the State filed its second petition for termination of the mother's parental rights. Following a hearing, the juvenile court on September 8, 2011, entered its order terminating the mother's parental rights pursuant to Iowa Code section 232.116(1)(h) and (l) (2011). The mother now appeals.

II. Scope and Standards of Review.

We review the juvenile court's decision to terminate parental rights de novo. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). The State must prove grounds for termination by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). In considering whether to terminate, our primary considerations are the child's safety; the physical, mental, and emotional condition and needs of the child; and the placement that best provides for the long-term nurturing and growth of the child. Iowa Code § 232.116(2); *P.L.*, 778 N.W.2d at 37.

III. Discussion.

On appeal, the mother contends the State failed to prove the grounds for termination by clear and convincing evidence. She also argues termination is not in the child's best interests. We address her arguments in turn.

A. Grounds for Termination.

We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). Termination is appropriate under section 232.116(1)(h) where there is clear and convincing evidence:

- (1) The child is three years of age or younger.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

There is no dispute the first three elements of this section have been proved. However, the mother contends there is insufficient evidence to show the child cannot be returned to her care at the present time. Upon our de novo review, we find the State has met its burden.

While the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," this patience has been built into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). The legislature incorporated a six-month limitation for children adjudicated a CINA aged three and younger. Iowa Code § 232.116(1)(h)(3). Our supreme court has stated that "the legislature, in cases meeting the conditions of [the Iowa Code], has made a categorical determination that the needs of a child are promoted by termination of parental rights." *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990) (discussing Iowa Code § 232.116(1)(e)). The public policy of the state having been legislatively set, we are obligated to heed the statutory time periods for reunification.

Here, the mother has relapsed several times during the pendency of this case and was unable to remain sober. We agree with the juvenile court's conclusion:

[D]espite all of [the] resources being offered to [the mother], including the conclusion of relapse prevention just weeks before, she was unable to prevent herself from relapsing on three different forms of drugs in late June and early July [2011].

The bottom line for this court is that the mother suffers from a chronic substance abuse condition that makes her a danger to herself and others and the offer of countless services has not prevented this condition from interfering with her ability to safely parent her child. Placement with the mother cannot be made at this time or within the foreseeable future.

Although she was given an additional six months to continue her sobriety and work towards reunification, the mother did not make changes to demonstrate she can remain sober and be a safe parent to the child. Given the mother's lack of sobriety, we find the State proved by clear and convincing evidence the child could not be safely returned to her care at the time of the hearing.

B. Best Interests and Iowa Code section 232.116(3).

If a statutory ground for termination is determined to exist, the court may terminate a parent's parental rights. *P.L.*, 788 N.W.2d at 37. In considering whether to terminate, the court must then apply the best-interest framework established in section 232.116(2). *Id.* The legislature highlighted as primary considerations: the child's safety; the best placement for furthering the long-term nurturing and growth of the child; and the physical, mental, and emotional condition and needs of the child. *Id.*

Furthermore, even though a court may find termination appropriate under section 232.116(2), a court need not terminate the relationship between the parent and child if any of the enumerated circumstances contained in section 232.116(3) exist. See *P.L.*, 778 N.W.2d at 37. Section 232.116(3)(c) provides termination is not required where it would be detrimental to the child due to the

closeness of the parent-child relationship. The exceptions set forth in 232.116(3) have been interpreted as permissive, rather than mandatory. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997), *overruled on other grounds by P.L.*, 778 N.W.2d at 39-40. In determining whether to apply this section, we consider the child's long-term and immediate best interests. See *P.L.*, 778 N.W.2d at 37. A court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to apply this section to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993).

Taking the above-mentioned factors into account, we conclude termination of the mother's parental rights is in the best interests of the child, and the exception set forth in Iowa Code section 232.116(3)(c) does not preclude termination of her parental rights under the facts of this case. While we do not doubt her love for the child and the child's for her,

[i]t is well-settled law that we cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child.

Id. at 41. Children are not equipped with pause buttons. "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). "At some point, the rights and needs of the child rise above the rights and needs of the parents." *J.L.W.*, 570 N.W.2d at 781.

We recognize and commend the efforts the mother has made in attempting to address her long-standing issues with substance abuse. However,

the record reveals the child cannot be returned to her care at this time, and the child should not be forced to wait for permanency.

We have repeatedly followed the principle that the statutory time line must be followed and children should not be forced to wait for their parent to grow up. We have also indicated that a good prediction of the future conduct of a parent is to look at the past conduct. Thus, in considering the impact of [an] addiction, we must consider the treatment history of the parent to gauge the likelihood the parent will be in a position to parent the child in the foreseeable future. Where the parent has been unable to rise above the addiction and experience sustained sobriety in a noncustodial setting, and establish the essential support system to maintain sobriety, there is little hope of success in parenting.

In re N.F., 579 N.W.2d 338, 341 (Iowa Ct. App. 1998) (citations omitted).

The mother has not made changes to show she is going to be sober and be a safe parent to the child, again testing positive for substances in July 2011. We cannot maintain a relationship where there exists only a possibility that the mother will become a responsible parent sometime in the unknown future. Given the mother's overall lack of progress during the case, we agree with the juvenile court that termination of the mother's parental rights was in the child's best interests. Under the facts of this case, we do not find the mother and child's bond a sufficient reason to refuse to terminate the mother's parental rights. Accordingly, we affirm the termination of the mother's parental rights.

AFFIRMED.